

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
455 Golden Gate Avenue
San Francisco, CA 94102



May 15, 1999

Dean Derleth, Esq.
Best, Best & Krieger
3750 University Ave.
Riverside, CA 92502-1028

Re: *Public Works Case No. 99-005*
Lucia Mar Unified School District
Performing Arts Center

Dear Mr. Derleth:

This letter constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under the California prevailing wage laws, and is made pursuant to Title 8 California Code of Regulations (C.C.R.) section 16001(a). Based upon my review of the documents submitted and an analysis of the relevant facts as presented, I have determined that the construction of the performing arts center ("Center") is a public works within the meaning of Labor Code section 1720(a).

This case involves a request by Lucia Mar Unified School District ("District") for guidance regarding its prevailing wage obligations in the construction of the Center on the campus of the Arroyo Grande High School in the City of Arroyo Grande, County of San Luis Obispo. A private, non-profit foundation known as the South County Performing Arts Building Foundation ("Foundation") has raised \$4.5 million for the construction of the Center, which will be owned, operated and used by the District upon its completion. In addition, public funds in the amount of \$565,000 from the City, County and the State will be spent on the project for interior furnishings and certain other distinct portions of the work.

The project is covered by the "Field Act." Education Code sections 16700 and 81130. The Field Act, among other things, requires that buildings that house students and teachers meet certain specific standards for seismic and other safety requirements. The work must be approved by the Office of the State Architect under the auspices of the Department of General Services. The District will administer the construction contracts on behalf of the Foundation because the Field Act requires the District to fulfill a number of requirements set forth by the State Architect, including reports, approvals, preparation of plans, specifications, estimates, qualifications, and observation of

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construction requirements. The District will also administer all the funding for the project. According to the attorney for the District, the \$4.5 million funds provided by the Foundation have been deposited into a District account maintained separately from the \$565,000 funds provided by the public entities.

Labor Code section 1720(a) defines public works to mean: "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds..." Under 8 California Code of Regulations section 16000, public funds include state, local and/or federal monies.

Based on the facts presented, I find that the construction of the Center is a public works because it is constructed under contract and paid for with public funds. Certainly the \$565,000 from the public entities are public funds and any work paid for with those funds is a public works. While the \$4.5 million from the Foundation was originally private funds, its deposit into the District's coffers transforms its status to public funds. This proposition is bolstered by the fact that the District will oversee the project and administer the funds, as well as own, operate and use the Center after it is constructed.

Another compelling reason for finding the construction of the Center a public works lies within the language of the Field Act. The consolidated statute provides in six places that the purposes of Field Act facilities funding are public works. I believe the Legislature placed these phrases in the bill to declare that all work done under this enactment for the purposes of school building safety are public works requiring the payment of prevailing wages.

Sincerely,



Stephen J. Smith
Director

cc: Marcy Vacura Saunders, Labor Commissioner
Maria Robbins, Deputy Chief, DLSR
Rita Tsuda, Deputy Chief, DAS
Vanessa L. Holton, Assistant Chief Counsel